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ABATEMENT.

1 Where several partners jointly assume, one may be sued, and cannot plead in abatement the non joinder of the others. *Oldham* v. *Henderson.* 295

ADMISSIONS.

1 Where a creditor admitted the receipt of money from his debtor, but stated it to be a loan, the admission taken together does not amount to proof of payment. *Oldham* v. *Henderson.* 295.
2 Nor could the amount received, be allowed as a set-off, unless claimed as such before, or at trial. *ib.*
3 See petition, &c., No. 4.

ADMINISTRATION.

1 See evidence, No. 3.
2 See costs, No. 1.
3 The 63d and 64th sections of the Administration Act of '25, was not intended to give exclusive jurisdiction to the county court in relation to enforcing a distribution among distributees. Where the records of the county court show that all debts have been paid,—that the amount of the property is ascertained, and three years have elapsed since administration was granted, a distributee may maintain his action of debt in the circuit court against the administrator, or his securities. *State to use of Ingram* v. *Rankin*, &c. 426

AD QUOD DAMNUM.

1 The verdict of a jury, on a writ of ad quod damnum, may be objected to by any person who may consider himself injured by the building of the proposed dam; and the court is bound to hear the testimony offered. *L. and D. Grove* v. *Zumwalt.* 567

AFFIDAVIT.

1 In actions on lost bonds, the affidavit of loss, &c., may be made before a justice of the peace. *Kearney* v. *Woodson and Trigg, admr's.* 114

AGENT.

1 See bills of exchange, No. 1.
2 See notices No. 5

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3 The county of St. Louis appointed a commissioner to act jointly with one to be appointed by the city, to contract for building a bridge on such plan as *they* should think best. The law authorizing this agency, requiring the county court first to decide on the plan and materials, and then to appoint a commissioner, &c. not having been pursued in this case, the appointment was held illegal, and the person appointed not the agent of the county. *County of St. Louis* v. *Clelland*. 84
4 The commissioner or agent of a county may adopt any seal, and it will be the seal of the county for that purpose. *ib.*

AGREEMENT.

1 See contract, No. 1, 2.

AMENDMENTS.

1 Where a judgment is given by mistake for a sum greater than the demand, and the sum is rightly stated in any of the pleadings, the appellate court will not on that account reverse it, but will, under the provisions of the statute of Amendments and Jeofails, (Rev. Co. of '35, 468-9,) allow the plaintiff on his application, to enter a remittitur as to the excess. *Atwood* v. *Gillespie*. 423
2 In a petition and summons on a promissory note, the note given in evidence varied from the one recited in the petition by the omission of the word "pay."—Quere, whether such variance be material? At all events, the circuit court will not err in permitting an amendment to be made on the trial.—Rev. Co. of '35, 467. *ib.*
3 See equity, No. 6, 7.

APPEAL.

1 To show notice of an appeal from the judgment of a justice of the peace to the circuit court, it was proved that the appellee, about nine days before the return term of the circuit court, said that "K. had served on him a written notice of Brown's appeal." It was also proved, that K. had, about three weeks before the said term of the circuit court, absconded on account of debt, (as was supposed,) and had not since been heard of. Held, sufficient evidence that legal notice in writing was given ten days before court. *Kelsy* v. *Brown*. 8
2 On motion in the circuit court to dismiss an appeal from a justice of the peace, it appeared an appeal was *prayed*—an affidavit made and certified—an appeal bond signed and filed, but not tested by the justice. Held, sufficient evidence of an appeal—and that it was the duty of the justice to have certified the appeal bond, and the circuit court did right in permitting a new bond to be filed. *Jones* v. *Davis*. 28
3 In prosecutions before justices of the peace for assaults and batteries, under the Acts of 10th February, 1825, and 18th January, 1831, the defendant must appeal, if at all, on the day of trial, and an appeal taken on a subsequent day is void. *State* v. *Epperson*. 90
4 See equity, No. 2.
5 In an appeal from the jndgment of a justice of the peace, it appeared that the affidavit and recognizance were not taken until several days after the appeal was granted. Held, that for this cause, the circuit court should have dismissed the appeal. *Filley* v. *Wells and Patterson*. 271
6 The executor of an estate claimed certain slaves as his own property;—the widow of the testator applies to the county court to compel him to inventory them as the property of the testator—which he is ordered to do. Held, that it is not an order or decree from which an appeal will lie to the circuit court. *Davis* v. *Davis*. 204
7 See notices, No. 8. Practice, No. 5.
8 The State has no right of appeal in criminal cases, where the defendant has been acquitted of a felony by the verdict of a jury. *State* v. *Heatherly*, 478

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ASSAULTS AND BATTERIES.

1 See appeal, No. 3.
2 Where the declaration in an action of assault and battery contains but one count, and a plea of *son assault demesne* is put in and sustained by proof, the plaintiff will not be permitted to give evidence of another assault. *Peyton* v. *Rogers*. 254
3 See indictments, No. 16, 17.

ASSIGNMENT.

1 A having given his note to B, was summoned as a garnishee in a suit against B, and a recovery was had. In an action by C, to whom B had assigned the note (before the attachment) against A, the record of the recovery against him as garnishee, is a good bar to the action.
Nor will it matter that C has exchanged the note for four other smaller notes, amounting to the same sum, and for the same consideration. *Wolf* v. *Cozzens*. 431

ASSUMPSIT.

1 In assumpsit for money paid to the use of defendant, the record of a circuit court in Ky. is admissible to prove a recovery against plaintiff and defendant for the same thing, and that plaintiff paid the amount—other evidence may then establish that plaintiff was merely security. *Davidson* v. *Peck*. 438
2 It is not necessary to the admission of such testimony, going to prove the actual relation of the parties, that the deposition containing it, should recite the record. *ib.*
3 If an action of assumpsit is brought to recover money paid on a contract made in Ky. and alleged to be void, it dovolves on the plaintiff to shew that by the laws of Ky. the contract was void. *Leak* v. *Elliott*. 446
4 See verdict, No. 2.
5 See contracts, No. 1, 2, 3.

ATTACHMENT.

1 See Sheriff's sales, No. 2.

AUTHENTICATIONS.

1 To render a certified copy of a deed, recorded in another State admissible in evidence here, it should appear by the certificate of the clerk in certifying the official character of the judge, that he is the presiding judge or justice of the court of which he is clerk;—therefore, a certificate of the clerk of the court of Hartford county, that A B is presiding judge of the 6th judicial district, composed of Baltimore and Hartford counties, is insufficient. Quere: would the words "duly commissioned and *sworn*" in this final certificate of the clerk, be equivalent to the words of the Act of Congress, "duly commissioned and qualified?" *Paca* v. *Dutton*. 371
2 The attestation of *two* witnesses is not necessary to a deed of emancipation in Md. made in pursuance of the Act of the Maryland legislature, passed in 1752, where the emancipation is to take place *in futuro*. *ib.*

BANK NOTES.

1 In an indictment against D, founded on the act to suppress private bank notes, it was proved that D was secretary, or cashier, of a certain private banking establishment, and resided in Wisconsin Territory, and signed the notes of said concern as such cashier; that the president, whose signature was also attached to the notes, resided in St. Louis, and kept a broker's office; that the president had exchanged two of said notes for two notes on the Illinois bank at the request of witness; that said notes were seen in

circulation in the city of St. Louis, and had been redeemed at the office of the president—that D had been seen once in St. Louis only, when he made some inquiries into his liability on said notes. Held, that there was no evidence of a circulation of said notes by D.—*Downing* v. *State*. 572

BILLS OF CREDIT.

1 Notes of the Bank of the Commonwealth of Kentucky are bills of credit within the meaning of the Con. of the U. S.; and a promissory note the consideration of which was said bills, is void.—*Commonwealth Bank of Kentucky* v. *Clark*, 59
2 The decision in above case affirmed.—*Griffith*, &c. v. *Com. Bank of Ky.* 255

BILLS OF EXCHANGE.

1 Suit by payee against drawer, acceptor having failed to pay, and bill protested for nonpayment. Held, that demand of payment at the counting room of acceptor, of his clerk, sufficient—without showing any special authority given the clerk in regard to such matters by his principal. *Draper* v. *Clemens*, 52
2 Demand of payment and protest of bills on *third day of grace*, proper. *Ib.*
3 The notary's protest is evidence of presentment and refusal to pay. *Ib.*
4 The notary may prove presentment for payment—refusal to pay and notice thereof, although he keeps a register of these matters. *Ib.*
5 When payment of a bill is demanded, it should be produced. *Ib.*
6 Proof that notice was sent by mail, to—&c., the place of residence of the drawer, and that witness believed (but was not certain) there was a post office there that year, not sufficient. *Ib.*

BILL OF DISCOVERY.

1 A bill of discovery presented at the first term after the trial term is in time. It is no objection to the discovery sought, that the party who seeks the discovery, had procured a continuance of the cause on account of the absence of a witness, by whom he expected to prove the facts sought to be discovered, when the bill shows that the deposition of witness had been taken, and that he failed to prove those facts. *Dempsey* v. *Harrison and Glasgow*. 267

BILL OF EXCEPTIONS.

1 A bill of exceptions details certain evidence, and then says, "whereupon the court decided, &c."—Held, that this does not show that all the evidence given in regard to the matter was preserved in the bill of exceptions. *Foster and Foster* v. *Nowlin*. 18
2 Forcible entry and detainer before justicese; ause taken to circuit court by certiorari; judgment of the justices affirmed. The exceptions taken in the circuit court to the proceedings before the justices no where appear on the record; nor does the paper supposed to contain them appear to be filed in the cause. Held, that it not appearing upou what matter the circuit court decided, its judgment must be taken to be correct. *Coleman* v. *McKnight*. 83
3 See Indictment No. 1. Demurrer No. 2.
4 On appeal in chancery cases, the supreme conrt, unless the evidence be preserved by bill of exceptions, cannot see whether the circuit court erred in deciding on it.—*Richardson, &c. Harrison*. 232
5 Where the circuit court overrules a motion to exclude certain depositions, on account of alleged informalities in their execution, and the fact of such informalities existing is not preserved by bill of exceptions, the court above cannot know but that the court below overruled the motion, because the facts were falsely stated in the motion. *Davidson* v. *Peck*. 438
6 Nothing can be assigned for error in the supreme court, except such as was made the subject of exception in the court below, whether the cause be in chancery or on the common law side of the docket. *Swearingen* v. *Newman, adm'r*. 456
Where the admission of evidence is objected to, such objection, together with the

testimony, must be saved in the bill of exceptions, and signed by the judge. *Withington* v. *Young*. 564

8 Where the evidence is not preserved in a bill of exceptions, the supreme court cannot determine whether the court below erred in refusing to grant a new trial or not.—*Searcy* v. *Devine*. 626

CERTIORARI.

1 The circuit court has no power to issue a writ of certiorari to bring up proceedings had before a justice, after trial there. *M. & W. Boren* v. *Welty*. 250

CHANCERY.

1 See wills, No. 4.

2 A sold his interest as heir to a tract of land to B, who sold to complainant; A afterwards sold the same interest to C, who purchased with full knowledge of the previous sale, and refused to make the necessary deed to B, though requested to do so by B. Bill prays, that A may be compelled to convey to B, or complainant, and that the deed from A to C may be cancelled. A, B and C were made defendants to the bill, but the subpoena was not served on B. Held, that A and C should be made to answer; that B should be brought in by an *alias* subpoena or publication, and that complainant should ask a decree of title to himself. *Hunter* v. *Gallagher and others*. 364

3 See equity, No. 6, 7.

4 See practice in chancery, No. 1.

CHARACTER.

1 In an action of slander, plaintiff to prove his character, read part of the deposition of a witness, who stated, that he had never known his character impeached, except in the present case. To invalidate this, the defendant should have been permitted to inquire whether he had not known it impeached in other cases. *Martin* v. *Miller*. 47

CIRCUIT ATTORNEY.

1 No other person, except the circuit attorney, is authorised to prosecute actions, in which the *county* is concerned. *County of St. Louis* v. *George Clay*. 559

2 Quere? Where such a writ is instituted by an authorised agent, and the judgment of the justice being against the county, an appeal is taken to the circuit court, and judgment is given against the appellant, is it error to enter up judgment against the security in the recognizance alone? *ib.*

CONSIDERATION.

1 In an action on a bill of sale, not under seal, it is not necessary to set forth a consideration, or to prove it. *Sloan* v. *Gibson*. 33

2 See pleadings, No. 7.

3 D had a negro which J wished to purchase. D owed R a sum of money, and it was agreed between D and J that J should have the negro, if he would pay R the sum D owed him, and procure R's receipt and discharge to D. J thereupon gave his bond to R, and R gave the receipt to D. The negro obtained his freedom. Held, that the consideration of the bond to R, was the discharge of the debt due him by D, and that R was not affected by the slave obtaining his freedom. *Relfe* v. *Jones*. 89

4 See fraud, 12, 13.

CONTRACTS.

1 If work be done under a special agreement, the agreement must be complied with be-

fore the party can recover any thing; and this is equally the case, whether *all* the work be done, or only a part, *Helm* v. *Wilson*. 41
2 It seems that the work must be done, and the contract complied with, both as to time and manner, before the party can recover at all. *ib.*
3 This is not the case if the other party prevents the doing of the work—or the times of the contract are varied by agreement—or performance is prevented by the act of God, *ib.*
4 If a mechanic undertake to build a "good rough stone wall," and he builds one in a very unworkmanlike manner, he cannot recover any thing for his labour, *Teagan* v. *Meredith*. 514
5 Nor will payment of part of the stipulated price, and a promise to pay the balance, before the defect in the work is discovered, constitute such an acceptance of the work as to impose any obligation on the employer to pay the balance. *ib.*
6 A agrees to pay B for a certain stone wall, when he (A) should build on the same, sell the same, or dispose of the lot, on which it was constructed.
Held, that A is entitled to a reasonable time to build or sell, and until that event takes place B cannot recover. What would be a *reasonable* time must depend on the circumstances of each case. *Bryant* v. *Saling*. 522
7 A purchaser of land agrees to pay the purchase money, on the delivery of the patents. Held, that vendor cannot recover in a court of law, without a compliance with the condition precedent, notwithstanding an act of Congress passed subsequently to the making of the agreement may have rendered the delivery impracticable or unnecessary. *Choutteau* v. *Russell*, 553

CONSTITUTION.

1 See bills of credit, No's. 1, 2.
2 Where one general assembly proposes amendments to the constitution of the State, which are ratified and adopted by the next general assembly, the supreme court may yet look into their proceedings, to see that all prerequisites have been complied with, and that they have been adopted by proper majorities. *The State* v. *McBride*. 302
3 An amendment which is ratified by two thirds of a quorum—that is, two thirds of a majority of all elected, is ratified by two thirds of the *house*, within the meaning of the constitution. *ib.*
4 The first amendment proposed by the seventh, and adopted by the eighth general assembly, which vacates the offices of the judges of the circuit court, is an independent amendment, and can well stand alone. The said amendment is valid, and vacated the offices of the judges of the circuit courts, on the 1st of January, 1836. *ib.*
5 The act of the general assembly granting a divorce of Gentry and wife—unconstitutional. *State* v. *Fry and others*. 120

CONTINUANCE.

1 See practice, No. 2.
2 When an insolvent debtor obtains a final discharge, and at a subsequent term allegations of fraud are filed against him, he is entitled to a continuance, as a matter of course. *Jones* v. *Talbot*. 279

CONVEYANCES.

1 A conveyance by husband and wife of land held in right of the wife, made after the introduction of the common law in 1816, and before the act of '21, expressly authorizing such conveyances, is void—both by the Spanish law, which the adoption of the common law did not repeal, and by the common law itself. *Lindell* v. *McNair*. 380

COSTS.

1 Suit may be brought in the *county* court against an administrator to have a demand allowed against the estate, within one year from the grant of administration, without

the plaintiff being liable for costs in case he succeeds; otherwise, if brought in the circuit court within the year. *Gibbs* v. *Mann, adm'r.* 55

2 Action of assumpsit—plea, general issue and set-off—matters referred to arbitrators, who awarded that defendant should pay plaintiff a sum of money (below the jurisdiction of the court,) and the costs of suit. *Per curiam.* The statute regulating arbitrations and references, allowed the plaintiff in this case his costs. The act regulating set-off would also allow the plaintiff his costs. *Burton* v. *Martin.* 200

3 Where a prisoner is committed to the jail of one county, for an offence committed in another, and a guard is employed, the county wherein the jail is situated, is not liable for the pay of such guard. *County of Perry* v. *Logan.* 434

COUNTY COURTS.

1 See appeals, No. 6.

COVENANT.

1 Action of covenant for not making deed on a certain day—plea, that defendant offered to make the deed, and that plaintiff refused to accept it. Replication, denying the tender—issue. Held, that proof that plaintiff said he was ready to make the deed, and that defendant said he was ready to receive it, but that both agreed to wave the making at that time—did not support the plea. *Sharp v. Colgan.* 29

2 More than nominal damages can be recovered on the covenant sued on, the breach of which is assigned. *ib.*

3 If a breach, as assigned, is too large, the declaration may be amended: and it can be no reason for refusing to reverse on account of a misdirection of the judge to the jury. *ib.*

4 Action of covenant, and breach assigned, for not making deed on a day certain: plea, that defendant attended at the time and place, and offered to make the deed, and that plaintiff then and there waved the same, and excused the defendant from making it. Held, to be a good plea. Nor is it any objection to such a plea, that there were other breaches assigned, and that the plea does not answer them all, provided such breaches are answered severally by separate pleas. *Colgan v. Sharp.* 263

5 More than nominal damages may be recovered on the covenant sued on, the breach of which is assigned. *ib.*

6 Action of covenant—pleas, 1, performonce, and 2, an excuse for performance. Held, that by these pleas, defendant admitted the execution of the instrument declared on, and that therefore the circuit court very properly excluded it from the jury. *Curl and Hardwick v. Mann.* 272

7 Defendant having pleaded an excuse for not performing his covenant, plaintiff may give evidence to show that he had no excuse, *ib.*

8 In an action of covenant, it must appear in the declaration *with to whom* the covenant was made. So, the performance, or readiness to perform, or excuse for the performance of a condition precedent, must be shown at the place and within the time specified. Covenant to partners,—breach should be, the failure to perform to them, or either of them. The above errors are not cured by a judgment by default.—*Keatly* v. *McLaurly.* 221

DEBT.

1 Declaration in debt against G and T on Kentucky record. First count recites recovery of judgment against G—execution—replevin bond taken, executed by G and T, returned and filed in the clerk's office, with averment that by the laws of Kentucky, it had the force and effect of a judgment, and as such was required to be kept in the said office, and plaintiff could not make profert thereof. Second count like the first—and makes profert of a copy of replevin bond. Third count like the two first, with an averment that a scire facias issued on the replevin bond, and judgment of execution was rendered against both defendants. Defendants plead to each count separately, and to the whole declaration. Held, that plaintiff cannot recover on the original judgment of recovery, that being against G alone, and this suit against G and T on joint liability. That plaintiff cannot recover on the judgment on the scire facias, because a judg-

ment for execution and not of recovery, and if a judgment of recovery, it seems to be void for want of jurisdiction; defendants not being within the State, and not being served with process, and not appearing. Plaintiff may recover on the two first counts, as counts on replevin bond with excuse for profert. *Webb v. Garner* and *Trigg*, 10

DECLARATIONS.

1 See Evidence No. 4.
2 See Partnerships No. 4.

DECEIT.

1 If the owner of property stands by and sees another sell his property, and says nothing when he might with propriety speak, he shall not afterwards have the property, much less can he have it, when he encourages another to buy. *Skinner v. Stouse.* 93

DEEDS.

1 See authentications, No. 1 and 2

DEFAULT.

1 See practice No. 2
2 See pleadings, No. 16
3 An affidavit, on a motion to set aside a judgment by default, stating that defendant was advised, &c. without stating that he was advised by *counsel*, is insufficient. *Lecompte* and *Wife v. Wash.* 537
4 Such an affidavit must also show due diligence. *Ib.*

DEMURRER.

1 No objection to the plaintiff's statement will be good unless a general demurrer would lie—and want of profert is only cause of special demurrer. *Kearney v. Woodson* and *Trigg, admrs.* 114
2 It seems that whether a copy of the note or account sued on accompanied the petition, is matter in *pais*, and can only be put on the record by bill of exceptions. *Kearney v. Woodson* and *Trigg, admrs.* 114

DEPOSITIONS.

1 Notice was given to take depositions on the 14th July, to be continued, if necessary, from day to day until completed. The depositions of two witnesses were taken, commenced on the 14th, and continued from day to day until the 16th, when they were completed. Held, that as the depositions for any thing appearing on their face might have been taken in an hour, something must also appear to justify their delay—and unless something did so appear, they ought to be suppressed. What was done each day should appear on the record. *Bracken v. March.* 74
2 A dedimus directed to a judge or justice of another state, and authorising him to cause to come before him "such persons as shall be named by the *plaintiff*, his agent or attorney," is not pursuant to the provisions of the statute, and should be quashed on motion. *McLean, admr. v. Thorp.* 226
3 See Evidence No. 14.
4 Depositions taken at the appointed time and place, and at a reasonable time of day, are not to be excluded because the party notified to attend did not arrive until the other party had finished taking the depositions. *Waddingham and others v. Gamble.* 405

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DIVORCE.

See Constitution No. 5.

EJECTMENT.

1 A deed from A and wife to B, for the land of the wife, is sufficient to enable B to maintain ejectment, although the deed is not so acknowledged as to pass the title of the wife. *Bryan v. Wear and Hickman.* 106

2 The declaration charges that the plaintiff is legally entitled to the premises, plea not guilty—verdict for plaintiff and judgment arrested by the circuit court—per curiam—the act regulating ejectments requires the plaintiff to allege that he is legally entitled to the possession of the premises, &c. The declaration is therefore bad, even after verdict. *Jamison v. Smith and others.* 202

3 A certificate of the recorder of land titles, confirming a claim to a village lot in Saint Charles, gives sufficient title to maintain an ejectment, unless the person in possession can show a better title. *Administrator of Janis v. Gurno.* 458

4 Defendant in ejectment claimed title to the land in dispute as assignee of one P, to whom defendant contended it had been confirmed by the board of commissioners, but offered no evidence of the location of the land confirmed—the court did right in refusing to instruct the jury that if they believed the confirmation to P covered the land in question, they must find for defendant. *Waddingham and others v. Gamble.* 465

5 Nor would it prove title out of plaintiff to show that the land was, subsequently to a grant to him from the king of Spain, reunited to the domain of the king by the Lieutenant Governor, the United States who had all the title of the king of Spain, having confirmed the land to the plaintiff. *ib.*

6 The court did right in refusing to instruct the jury, that if they believed that P had title to the land in question, by possession, and cultivation, and subsequent confirmation, &c., they must find for defendant,—there being no evidence to prove that the land confirmed to P in consideration of cultivation and possession was the land in dispute, but strong proof to the contrary. *ib.*

7 The land book, or "livre terrien," No. 2, made under the authority of the Spanish government, is a public record. *Administrators of Wrighl v. Thomas.* 577

8 Defendant in ejectment derived title under a grant made by St. Ange, in 1769. It appeared in evidence that St. Ange was an agent of the French government, or *commandant*, and after the cession of the posts on the east side of the Mississippi to the British, and on the west side to the Spanish authorities, in pursuance of the treaty of 1762, moved to St. Louis, where, from '66 to '70, his authority as military and civil commandant of that post was recognized by the inhabitants; that he had no authority from the Spanish government until 1769, when, in conjunction with Piernas, the agent of the Captain General, O'Reilly, the concessions, &c., were resurveyed, and the result recorded in livre terrien, No. 2. It moreover appeared that the concession under which defendant derived title, was not contained in said book. *ib.*

9 Held, that St. Ange had no authority from the Spanish government to make grants of land, and if his authority to do so was in many instances recognized, or confirmed, by said government, the grant under which defendant claimed, was not among the number so recognized. *ib.*

EQUITY OF REDEMPTION.

1 See Mortgages Nos. 1, 2 and 3.

EQUITY.

1 No decree can be made against an answer, unless it be contradicted by two witnesses, or one witness, and strong corroborating circumstances. *Bartlett v. Glascock and others.* 62

2 Bill in equity to stay proceedings at law before J. P. and obtain an appeal. If the taking an appeal was prevented three days after the trial by the absence of the justice, it must appear in the bill that the party did not know of the intended absence; and if a *part* only of the judgment before the justice be unjust, the bill must show what part

and that complainant had not a fair trial at law. *Smith* v. *D'Lashmutt.* 103

3 See Fraud No. 3.

4 Bill in equity. Bill states that one A died, leaving a will and letters of admistration with the will annexed, were granted to complainant and the widow of the testator—that she took possession of the whole estate, and complainant merely aided her with advice, &c.,—that after her death, B, one of the present defendants, was her executor, and residuary legatee. A legatee under the will of A, brought his bill in equity against complainant for the amount of his legacy, and made B and others defendants to that bill, and obtained a decree in his favor. Bill prays that B, the executor of A's administratrix, may be compelled to refund the amount he paid under the decree. Held, that the legatee was clearly entitled to satisfaction from the personal representatives of A; that the decree in his favor was conclusive of the amount of his legacy, and that complainant. who was compelled to pay the legacy, had an equitable claim for it on the administratrix of A, and since her death on her executor, one of the present defendants. *Richardson v. Adams and others.* 311

5 The complainant is not concluded by the fact that one of the present defendants was made a co-defendant with him in the suit brought by the legatee, because he was improperly joined with him in that suit; and moreover it does not appear that the same matters were litigated. *ib.*

6 Bill for specific performance—states one contract, charging that the land was paid for in *money*, and again that it was paid for in *hogs*. Held, to be multifarious, and therefore bad on demurrer; the complainant not having offered to amend, as he had a right to do, on terms; the court should have dismissed the bill without prejudice. *Wilkson v. Blackwell.* 426

7 It is not necessary to make a third person who is not a party to the interest involved, and whom a decree would not effect a party to the bill *ib.*

EVIDENCE.

1 By our statute, no proof of the execution of an instrument declared on is necessary, unless denied by plea supported by affidavit. *Foster and Foster v. Nowlin.* 18

2 And if illegal evidence thereof be given (where none was required) it will not make error. *ib.*

3 The statute applies to executors and administrators sued on notes of their testators or intestates. *ib.*

4 S sold slaves to F: After the death of S, the slaves were taken by F, thereupon the creditors of S sued F as executor de son tort. F proved that after the sale, and whilst the slaves were in possession of S, he declared they were not his, but belonged to F. Held, that the plaintiff might prove that S also said at another time whilst the slaves were in his possession that they were his own slaves. *ib.*

5 The brother of S and a distributee not a competent witness for plaintiff. *ib.*

6 Plaintiff may give in evidence records of judgments against S, to show his indebtedness at the time of the sale of the slaves, although not between parties or privies. *ib.*

7 It may be proved, by *parole*, that the transcript of judgment obtained before J. P. was filed in the county court, and that the county court allowed the amount of judgment so filed. The record of the county court *reciting* the transcript may be read without producing the transcript itself. *Huston v. Beeknell.* 39

8 A receipt given by defendant to a third person evidence for plaintiff against defendant. *ib.*

9 To show that a receipt was obtained without money paid, the defendant should be allowed to prove that the party to whom the receipt was given applied at one time for a receipt, and stated "that he wanted it for a particular purpose, and that the money had been paid to a particular person,"—the witness knowing of no money paid. *ib.*

10 See character, No. 1.

11 See Bills of Exchange, No. 3, 4, 6.

12 The defendant offered to read the deposition of one Walter D. Scott, which was objected to on account of Scott being interested, and the evidence was excluded. The proof to show interest was, that "the defendant and one Walter D. Scott had once been partners." Held, that the identity of the witness with the person who had once been the partner of defendant, was not proved, and could not be inferred from the identity of names, and the deposition should have been admitted. *Cozzens v. Gillespie.* 82

13 When the surveyor of the land of the United States in the State of Missouri certifies

copies of papers required by law to be deposited in his office, his handwriting need not be proved to authorize such copies to be given in evidence. *Bryan v. Wear and Hickman.* 106

14 A New Madrid certificate upon which a location and survey have been made, is properly deposited in the surveyor's office, and a copy may therefore be certified by him and given in evidence. *Bryan v. Wear and Hickman.* 106

15 Depositions taken in a former suit between the same parties, may be read in evidence, unless there be other objections than their having been taken in a former suit. *Tindall v. Johnson.* 113

16 In an action on a promissory note payable to A & Co., it is incumbent on the plaintiffs to prove the persons composing the company. *Dempsey v. Harrison & Glasgow.* 267

17 See wills, Nos. 1 and 3.

18 When A has certified a transcript of the record of a judgment of another State as clerk, the attestation of the judge (under the act of Congress) need not state that he is clerk. *McQueen v, Farrow.* 212

19 In a suit for freedom against a negro, it is no objection to the introduction of negro testimony, that defendant negro vouches a white man for warranty of title, *Meechum v. Judy, a woman of color.* 361

20 See variance, No. 2.

21 See assumpsit, No. 1 and 2.

EXECUTION.

1 Administrators sell land to G, under an order of court to pay debts—they give him a title bond to convey on payment of purchase money. Before payment, G sold, or conveyed, the land, to B: B went into possession: the land was afterwards sold under execution against G, for the purchase money. Held, that G had no title subject to sale on execution; that the purchase money being paid, there was no lien on the land therefor; that the purchaser, at the sheriff's sale, got no title, and lost his money, and that B was entitled to the land in law and equity. *Bartlett v. Glascock and others.* 62

2 See Frauds, No. 5, 6.

3 Judgments were obtained before a J. P., and transcripts filed in the circuit court, and executions issued by the clerk. Held, that it must appear before an execution could be issued by the clerk, that an execution had been issued by the J. P. and returned *nulla bona*, and without this proof a decree could not be made against any of the defendants. *Burk et al.* v. *Flournoy and others.* 116

4 An execution returned "not satisfied by levying on the property of A, and making $29," insufficient—it must show that A had no more goods, &c. *ib.*

EXECUTOR DE SON TORT.

1 A person may be charged as executor de son tort, although there be a rightful administrator. *Foster and Foster v. Nowlin* 18

2 S lived in Tennessee, and there died, possessed of personal property in that State. After the death of S, defendants took the property and brought it to Missouri. Held, that defendants may be charged as executors de son tort in this State. *ib.*

3 And defendants are liable according to the laws of Missouri, and the laws of Tennessee need not be proved. *ib.*

4 See verdict, No. 1.

FINES.

1. See indictment, No. 9.

FORCIBLE ENTRY AND DETAINER.

1 In an action for unlawful detainer, brought under the statute, before two justices, the evidence given or rejected, and the decisions of the justices thereon, form no part of the record or proceedings subject to be reversed by the circuit court—when brought before them by certiorari. *Hicks* v. *Merry.* 355

2 In forcible entry and detainer, the premises entered were described as "one house and one garden." Held, a sufficient description. *Tipton* v. *Swayne.* 98
3 But in such action, a forcible *detainer* must be alleged in the complaint, and it is not sufficient to allege only a forcible *entry.* *ib.*

FOREIGN JUDGMENT.

1 See debt, No. 1.

FRAUD.

1 Suit on a bond—plea, that the bond was fraudulently obtained by plaintiff—that the consideration was a slave sold by plaintiff at public sale, who to induce others to bid, himself bid $500—that the slave was afflicted with a hidden disease, well known to plaintiff—that defendant offered to return the slave. Held, that the plea was good. *Casey* v. *Smales.* 76
2 See insolvent debtor, No. 2.
3 Bill in equity states that executions issued from circuit court against A, and were levied on certain lands which were sold by sheriff, and that B and C became the purchasers, and afterwards sold to complainants—that A had before the sale purchased the land of D—and being in insolvent circumstances had, to defraud creditors, caused D to make the deed before the sale, to A's infant children. Prays that the deed to A's children may be set aside, and a conveyance made by D to complainants. Held, that B and C and D, should have been made parties. *Burk and others* v. *Flournoy*, &c. 116
4 See statute of Frauds, No. 1.
5 Where an attorney directs an execution to issue, contrary to the instructions of his client, and the sheriff sells property under the execution, it is yet necessary, in order to affect the purchaser at the sheriff's sale, to prove him informed of the fraud of the attorney. *Russell* v. *Geyer and others.* 384
6 The attorney for plaintiffs in execution, purchases the property at sheriff's sale, professing at the same time to act as agent for his clients, and with a view to the payment of their executions—he holds the property for six or eight months, to give the defendant in execution time to pay off the executions, and with a promise in that event, to reconvey to defendant—finally, the defendant failing to make any tender, he sells the property at public auction, to satisfy the demands of his client.
Held, that there being no evidence of fraud, on the part of the attorney, arising from gross inadequacy of price or otherwise, either at the sheriff's sale, or the sale at auction, he is not to be considered as a trustee for the benefit of defendant's creditors, and the purchaser takes a good, legal and equitable title. *ib.*
7 It is not fraud for a person to sell unsound property, knowing it to be unsound. But it seems that if the purchaser did not know of the unsoundness, and the seller concealed it, it would amount to fraud. If the purchaser ask relief, because of a slave being diseased when sold, and his subsequent death,—it should appear in evidence, that the disease of which he died, was that he had at the time of sale, and that the purchaser did not know at the time of purchase, of his unsoundness. *Stewart and Stewart* v. *Dugin.* 245
8 The grantor of a deed, attacked for fraud, may give evidence to sustain it—former opinion on this point overruled. *Baker* v. *Welch.* 484
9 To impeach a voluntary conveyance as fraudulent, it must be shewn that the grantor was largely indebted at the time conveyance was made. *ib.*
10 Gifts from husband to wife, whether voluntary or founded on a *good* consideration, will be sustained *inter partes* in a court of equity. *Woodson and Trigg* v. *McClelland.* 495
11 Where the deed is not recorded pursuant to our statute, it will still be valid between the parties, if founded on a good consideration. *ib.*
12 A by deed, purporting to be founded on valuable consideration, conveyed four slaves to B, with a condition that the possession of the same should remain in A, until his death. After twenty years possession, A emancipated them by deed, duly acknowledged, &c. Held, that however void the conveyance to B might have been as against subsequent purchasers, or creditors, it is at least, good against those claiming under the deed of emancipation; the latter being a voluntary act, and the grantees not being purchasers for valuable consideration. *Amy* v. *Ramsey.* 505

13 It is not necessary to prove any consideration for the bill of sale, as against the claimants under the grantor. *ib.*

FREEDOM.

1 An officer of the U. S. army who takes a slave to a military post within the territory wherein slavery is prohibited, and retains her several years in attendance on himself and family, forfeits his property in such slave by virtue of the ordinance of 1787. *Rachael* v. *Walker*. 350
2 See evidence, No. 18.
3 In a suit for freedom, under our statute, where the plaintiff claims on the ground that the master has violated the constitution of Illinois, by introducing slavery within its limits, the test question to ascertain whether such violation has been committed, and a consequent forfeiture taken place, is, whether the master *made any unnecessary delay in Illinois* with his slaves. *Wilson* v. *Melvin*. 592
4 It is not whether the *slave* acquired a *residence*. *ib.*
5 Nor is it, whether the *master* became a *domiciliated resident* of Illinois; Nor is it of any consequence that the slave remains *voluntarily* in Illinois. *ib.*
6 Where the testimony clearly proved that defendant left Tennessee with an intention of residing in Illinois, and that after a month's stay in Illinois, he proceeded to St. Louis to hire ont his negroes, and after so doing, returned to Illinois and spent the summer—raised a crop, &c. it is error for the court to give an instruction founded on the assumption that defendant was a mere transient sojourner in Illinois—such instruction being well calculated to mislead the jury. *ib.*

GAMBLING.

1 An indictment framed on the 17th sec., 8th art. concerning crimes and punishments, is not vitiated by an omission of the words "for money or property," in describing the device that was permitted to be set up—provided they are employed in describing the games that were allowed to be played on such device. *State* v. *Ellis*. 474
2 It is unnecessary to allege by whose permission the betting, gambling, &c. was done, the proprietor of the house where the device was kept being responsible for the use made of it. *ib.*
3 Horse-racing is a *game* within the meaning of our statute "to restrain gaming."—*Shropshire* v. *Glascock and Garner*. 536
4 S. P. *Boynton* v. *Curle*. 599

GARNISHEE.

1 See assignment, No. 1.

HABEAS CORPUS.

1 Where a free negro, who had been duly tried and committed under the 21st and 22nd sections of the "Act concerning free negroes and mulattoes," was brought before the supreme conrt on a habeas corpus—that court declined looking into the correctness of the decision made by the committing magistrate,—the legislature having provided other modes for reviewing, and if necessary, correcting the same, and neither the letter or spirit of the habeas corpus Act having any reference to commitments *after* regular trial by competent judicial officers. *Stoner* v. *the State*. 614

HIGHWAYS.

1 The banks of navigable rivers, in this State, are public highways, and though owned by private individuals, fishermen and navigators are entitled to a temporary use of them, in landing, fastening and repairing their vessels, and exposing their sails or merchandize: yet this right has its reasonable qualifications and restrictions, and will

not allow a navigator to land for several weeks, and under pretense of repairing, build houses, employ teams, &c. thereby unreasonably obstructing the owner's enjoyment of his property. *O'Fallon, ex'r. of Mullanphy* v. *Daggett and Price.* 343

HUSBAND AND WIFE.

1 See conveyances, No. 1.

INDICTMENT.

1 On trial of an indictment for exercising the business of auctioneers without license, the defendants were not entitled to bill of exceptions, until the passage of the Act of 1834-5. It seems that a bill of exceptions could not be allowed on the trial of any indictment. *W. and G. Vaughn* v. *the State.* 290

2 In an indictment for bearing a challenge to fight a duel, it must appear from the evidence, that the offence of which the prisoner is convicted, was committed within the State of Mo., or within the jurisdiction of the court. *Gordon* v. *the State.* 375

3 It is no bar to an indictment for a riot, that defendant was convicted before a justice of the peace under the laws of the corporation of St. Louis, of the same offence. Riots, &c. are expressly excepted by statute from the jurisdiction of a justice of the peace. *State* v. *Payne.* 376

4 It is not error for an indictment to charge the defendant with several distinct facts, where they all constitute one offence. *State* v. *Palmer and Doll.* 453

5 If the venue be laid in the body of the indictment "at the township of St. Louis," it is sufficient—as it may be referred to the "county" in the margin. *ib.*

6 See larceny, No. 1.

7 See gambling, No. 1, 2.

8 Charging an offence in the *alternative*, following the words of the statute, is not fatal, when the descriptive words in the statute are synonymous. *State* v. *Ellis.* 474

9 By the 29th and 30th sec. 9th art. of the Act concerning crimes and punishments, the jurisdiction of the circuit court over offences punishable only by fines not exceeding a hundred dollars, is taken away, such offences are therefore not indictable. *Williams* v. *the State.* 480

10 In an indictment reciting that the grand jurors were "empannelled, sworn and charged," *time* and *place* need not be laid, to show *when* and *where* they were so sworn.—*W. L. and G. Vaughn* v. *State of Missouri.* 530

11 An indictment charging that defendants "did exercise the business of a public auctioneer, and then and there sold goods as such auctioneer, &c." pursues the essential descriptive words of the statute, and is good. *ib.*

12 It is error to charge *two* persons with jointly exercising the trade of an auctioneer. *ib.*

13 An indictment describing a note as purporting to be *payable to the holder*, when on its face it purports to be *payable to bearer*, is bad. *Downing* v. *the State.* 572

14 See Bank notes, No. 1.

15 Where the legislature have specified a "bill, plaint, or information" as the mode of recovering a fine or penalty, an indictment will not lie. *State* v. *Corwin.* 618

16 An assault with *intent to wound*, is not indictable under our statute. *State* v. *Johnson.* 669

17 An assault with *intent to commit manslaughter* is indictable, and it is sufficiently described in the indictment as an assault with *intent to kill.* *ib.*

INJUNCTION.

1 In chancery. The complainant and Y executed their promissory note to defendant—Y made a payment thereon. Defendant sued complainant alone, in Kentucky, and got judgment at law, without giving credit for the full amount paid by Y—sued out execution and collected part; and took property in execution which was claimed by one B, who got possession thereof, having given a replevin bond, by which he was bound to pay the value of the property should the right be decided against him.—Right of property not determined, complainant removed to this state, without the judg-

ment being paid or satisfied, and is sued here thereon, and judgment obtained without any credits.
The court decreed to defendant his judgment at law, obtained in this State—and damages on the part enjoined (deducting the credits) to be paid over to defendant, on his assigning to complainant the interest he acquired by replevin bond, complainant paying costs of suit thereon. *Yantis* v. *Burdett.* 4

INSOLVENT DEBTOR.

1 See continuance, No. 2.
2 It seems that a debtor may give a preference to some of his creditors, in contemplation of taking the benefit of the insolvent act; and such preference is not therefore an *undue* preference—nor is it therefore fraudulent. *Jones* v. *Talbot.* 279

INSTRUCTIONS.

1 The plaintiff gave certain matters in evidence to the jury, part written and part parole none of which were attempted to be disproved, &c. then moved the court to instruct the jury that he had shown a legal title to the possession of one half the land in controversy. Held, that it amounted to instructions that they must believe the evidence, and therefore erroneous *Bryan* v. *Wear and Hickman.* 106
2 Under the provisions of the statute regulating the interest of money, allowing creditors six per cent. per annum, in cases where money has been "withheld by an unreasonable and vexatious delay of payment," it is for the jury to determine whether the money has been unreasonably and vexatiously delayed, and it is error, if the court instruct the jury "to allow interest at the rate of six per cent. per annum, from the time they believe the defendant received the money of the plaintiff. *McLean, adm'r.* v. *Thorp.* 256
3 Where erroneous instructions are given for one party, the error is not corrected by giving for the other party instructions explanatory or contradictory to those first given. The erroneous instructions should be expressly withdrawn from the jury. *Jones* v. *Talbot.* 279
4 In an action of trover for a slave, where the plaintiff proved that defendant who was a negro trader, purchased the slave of the mother of plaintiff, knowing her to have only a life estate in him, and was seen with said slave in his possession a few days after the sale. It is error in the court to instruct the jury that there was no evidence of a converson, and no sufficient proof of title, and that the plaintiff had not made out a prima facie case. The strength and sufficiency of the evidence should be left to the jury. *Speed* v. *Herrin.* 356
5 See ejectment, No. 45.

JAILS.

1 See costs, No. 3.

JUDGMENTS.

1 An entry by the clerk that judgment was confessed in open court, and that the amount was liquidated by the clerk at a certain sum, is not a judgment of the court on which a recovery can be had. *Hill v. Tiernan and Maslin.* 316
2 See pleading, No. 12.
3 A judgment by confession before a clerk of a circuit court is legal, and the statute which authorizes such judgments is constitutional. *Russell v. Geyer and others,* 384
4 See circuit attorney, No. 2.

JURISDICTION.

1 See wills, No. 4.
2 See indictment, No. 2, 3.

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JURORS.

1 See practice, No. 4.

JUSTICES' COURTS.

1 See trespass, No. 7.
2 See appeal, No. 1, 2.
3 A sells a clock to B, and gives a written warranty that it is a good time piece. B gives his bond for the price, which A sells, and suit is brought on it against B before a J. P. Appeal to circuit court, B offered to prove, as a defence, under the act of 1831—the warranty—that the bond was given for the clock—the failure of the warranty, and that he could not find A to return the clock to, or to sue, on the warranty. Held, to amount to a good equitable defence under that act. *Davis v. Cleveland.* 206
4 See forcible entry and detainer, No. 1.
5 The keeping of a roulette table, at which a game of chance was played for money, and inducing a person to bet thereat, and at which he did bet and lose money, is an offence for which a justice of the peace may issue his warrant, and cause the offender to be apprehended. *Exparte Bishop.* 219

LARCENY.

1 Since the act of the general assembly, (Revised Code, page 179, section 42) if A hires a horse, and either at the time he gets possession of him, or afterwards conceives the design of stealing him, and carries him away with that design, he is guilty of larceny.—*Norton v. the State* 461

LAWS.

1 See assumpsit, No. 3.

LIEN.

1 A vender who conveys in fee simple to the purchaser from his vendee, retains a lien on the lands for the purchase money in the hands of such purchaser. WASH, Judge, dissenting. *Marsh v. Turner and Lisle.* 253
2 A circuit court cannot make a judgment by confession before the clerk, its judgment, and thereby alter the time when their lien would commence. *Russell v. Geyer et al.* 384

LIMITATIONS.

1 Assumpsit on a promissory note, pleas, non assumpsit within six years, and non assumpsit within ten years. At the time the note was made, the limitation was five years; at the time it became due, it was ten years. Held, that the plea of non assumpsit within ten years is good. *Davis v. Hascall.* 58
2 An acknowledgment by B, that he had given the note sued on—had not paid it, and did not intend paying it, because it was given for land to which the payee had no title; is not sufficient to take the case out of the statute of limitations. *Buckner v. Johnson, administrator.* 100
3 To take a case out of the statute, there must either be an express promise to pay, or an acknowledgment of a real subsisting debt, on which the law would raise a promise to pay a particular sum. *ib.*
4 It is not sufficient to take the case out of the statute for a plaintiff to prove by a witness that in a conversation between defendant and witness, relating to the subject matter in controversy, within five years before the commencement of the suit, defendant informed the witness "that he must have some money or plaintiff would sue him."—*McLean, admr, of Brockman v. Thorp.* 256

5 Nor would an acknowledgment by defendant that plaintiff had not received the amount of his demand, be such an acknowledgment as would imply a new promise to pay on the part of defendant, which is necessary to take the case out of the statute. *ib.*
6 Under the statute of limitations, 1825, the ten years within which action of debt must be brought on bonds and notes, do not commence until the act goes into effect. *Weber v. Manning.* 229
7 Where a promissory note is made payable on a day specified after the date thereof, the statute of limitations commences running from the time it becomes due, and not from the date of its execution. A plea of the statute in actions on such notes must be framed accordingly. *Johnson admr v. Buckner.* 624

LOST INSTRUMENTS.

1 See affidavit, No. 1.
2 See profert, No. 1.

MANDAMUS.

1 The supreme court will not issue a mandamus commanding the circuit court to alter its record, nor to make it conform to the state of facts set forth in affidavits. *Dixon v. Judge of 2d Jud. Cir.* 289
2 Where a cause is taken from a justice's court to the circuit court by mandamus, it is error in the circuit court to reverse the judgment of the J. P. and enter up a judgment against the party who recovered in the court below. The court should proceed to a trial de novo. *Duncan v. Travis.* 369

MISTAKE.

1 See amendment, No. 1.

MORTGAGE.

1 Where a mortgagee after taking the necessary steps pointed out by our statute, forecloses a mortgage, a purchaser under the foreclosure takes the title, divested of all rights and interests derived from the mortgager subsequent to the mortgage. *Russell v. Heirs of Mullanphy.* 319
2 The act of 1807, which directs "the mortgager, his heirs, or representatives," to be summoned to appear, &c., intended to embrace only those to whom the land would descend, or those who represent the personal fund out of which the redemption money would come, and does not require the mortgagee to notify subsequent incumbrancers. *ib.*
3 Subsequent incumbsancers cannot be permitted to redeem a part, without paying the prior incumbrancer his whole demand. *ib.*

NEW MADRID CERTIFICATE.

1 See evidence, No. 13.
2 A New Madrid certificate to A B or "his legal representatives" is not void. *Bryan v. Wear and Hickman.* 106
3 It seems that "the legal representatives" of A B are those deriving title from him by purchase or descent. *ib.*
4 Such New Madrid certificate is not void on account of A B being dead at the time of its emanation. *ib.*
5 A having a claim to a tract of land fifteen arpens front, by forty back, which, by survey, was found to contain 787 arpens, applied to the board of commissioners of confirmation of 640 arpens, which was granted, and the excess thrown off on the west. The excess was afterwards covered in part by a N. M. claim, patented, and by purchase of United States patents. Held, as to the excess, to be a mere question between an unconfirmed Spanish grant, and a subsequent grant by United States. The subsequent grant is good at law. *Mullanphy's admr. v. Redman.* 226

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NEW TRIAL.

1 Verdict for plaintiff below—motion for new trial. Held, that on the evidence the jury ought to have found for defendant; and having found otherwise, the circuit court ought to have granted a new trial, and its refusal to do so is error. *Clemens v. Laveille and Merton.* 80

2 Not more than one new trial can be granted to either party unless the jury have erred upon a question of law, or been guilty of misconduct, &c. *Hill v Wilkins.* 86

3 The power of the circuit court in granting and refusing new trials, is subject to be reviewed by supreme court, and its judgment therein reversed. *ib.*

4 For the errors of the jury in matters of law, but not for the errors of the court, a *second* new trial may be granted. *ib.*

5 It seems the *second* new trial will be considered as improperly granted, unless the question of law on which the jury are said to have erred, be preserved on the record. *ib.*

6 The supreme court will not interfere with a verdict and direct a new trial, except in cases where the jury clearly erred, and the court refused a new trial *Oldham v. Henderson.* 295

7 In a motion for a new trial, on the gound of surprise, the affidavit of the applicant must allege that the verdict is unjust, and that he has merits, &c. *Mecchum v. Judy.* 361

8 See practice, No. 4.

9 See practice in chancery, No. 1.

10 See practice, No. 6.

11 An affidavit, on a motion for a new trial, should contain a positive averment of merits. *Elliott v. Leak.* 540

12 The supreme court will not disturb the verdict of a jury, or the circuit court sitting as a jury, unless the matters of law or fact determined by such verdict are properly brought before the court by a motion for a new trial in the court below. *Polk v. the State.* 544

NON SUIT.

1 See practice, No. 1.

NOTICE.

1 See appeal, No. 1.

2 In equity. B had a deed for certain land not recorded. D heard B say he had title to the lands. Held, that D, who afterwards purchased the lands from another, had sufficient notice of B's title to put him on iquiry, and if he purchased without farther inquiry, he purchased with notice of B's title. *Bartlett v. Glascock &c.* 62

3 Actual possession of land by self, or tenant, is notice to all of title. *ib.*

4 If a purchaser, with notice of title in another, sells to one having no notice, the latter is protected in his purchase. *ib.*

5 D purchases land at public sale, and by a subsequent arrangement the deed is made to G. Held, that D is not the agent of G in regard to the purchase, and that G is not affected by any notice D may have had of title in another. *ib.*

6 If notice of a writ be served by leaving a copy, it must appear to have been left with a *white person* of the family. *Dobbyns v. Thompson.* 118

7 The return showed it was served one F, whom the sheriff considered a member of the family—parol evidence was offered to show that F was a member of the family. Held, that this should have been received, if necessary, but was unnecessary, there being other defects. *ib.*

8 To prove notice of an appeal from a justice of the peace to the circuit court, a witness stated that more than ten days before the first day of the circuit court, he served on the appellee a notice signed by appellant that an appeal had been taken from the judgment of justice E, (before whom the case had been tried) that he did not recollect whether the names of the parties were inserted, but believed they were. Held, *prima facie* evidence of legal notice, and should have been received by the circuit court as such. Notice to produce a notice need not be given to authorize the contents of the first notice to be proved by parole. *Hughes v. Hays.* 209

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ONUS PROBANDI.

1 In a *qui tam* action to recover the penalty provided in the statute against marrying minors without the presence or consent of parent or guardian, the burden of the proof of consent falls on defendant. *Medlock* v. *Brown*. 379
2 See assumpsit, No. 3.

PARTNERSHIP.

1 One S purchased goods of plaintiff, which the clerk of plaintiff, without directions, charged to S aloue. It was proved that S and defendant were in partnership in buying and selling goods, and no evidence was given to show that the goods were not purchased on account of the firm. Held, that there was no evidence on which to predicate an instruction "that if the goods were sold to S individually, and not on the credit of the firm, then defendant was not liable." Held, that defendant was liable if the goods were purchased by S, and defendant was a partner at the time, and the goods went into the partnership fund. *Bracken v. March*. 74
2 The declarations and admissions of parties, are sufficient evidence of a partnership, where the only testimony to rebut it is of a negative kind. *King v. Ham*. 275
3 See abatement, No. 1.
4 A declaration by one of a firm, after the death of intestate, that the firm owed $1100, is evidence of an account stated with intestate in his life time. *Cunningham v. Sublette*. 224
5 One partner cannot bind another by *deed* unless specially authorized thereto by deed under seal. *Bentzen v. Zierlein*. 417

PARTITION.

1 The judgment of the circuit court in a suit for the partition of land, will not be reversed by the supreme court in a collateral suit---objections must come from persons interested. *Waddingham and others v. Gamble*. 465

PERJURY.

1 To constitute perjury, the party must knowingly, and wilfully, swear falsely as to some matter material to the issue. *Martin v. Miller*. 47
2 If perjury was committed by the party in denying any matter, it is not perjury, the less because on cross-examination, or further examination, he confessed, or stated, the matter which he had before denied. *ib.*

PLEADINGS.

1 In Trespass, vide Trespass, No. 1, 2, 3, &c.
2 In Debt, see Debt, No. 1.
3 See Covenant, 1, 2, 3.
4 See Petition and Summons, 1, 2; Fraud, No. 1.
5 Plea—former recovery in another court—replication, nul tiel record, concluding with an averment and prayer of debt and damages—no rejoinder and judgment by default. Held, that judgment by default was properly taken. *Bates* v. *Hinton*. 78
6 Debt on bond—plea, non est factum, without affidavit. Held, error, to strike out the plea for want of affidavit. *ib.*
7 Debt on bond. Defendant pleaded first, that the bond was given for slaves bought of one H, and by him represented to be slaves for life, and his property—and avers they were not his property. 2nd. That the bond was given for slaves sold to him by plaintiff, and represented to be his property, and avers she held them by will from her husband, which will made no provision for children. Held, that both pleas amount to pleas of failure of consideration, and are bad. *ib.*
8 In replevin—see replevin, No. 3.
9 See assault and battery, No. 1.

10 No affidavit of the merits of an issuable plea is necessary, when there is evidence on file before the court, fully establishing the truth of such plea. *Colgan* v. *Sharp*. 263
11 See demurrer, No. 1.
12 A judgment of respondeat ouster is the proper one, where a demurrer to a plea in abatement is sustained, and it is error in the court to give a general judgment of recovery. *Jones* v. *Atwood*. 366
13 Suit on bond for $1800, defendant craved over, and set out the bond which had a condition for payment of $900, by instalments;—plea, *non est factum*, without affidavit. The plea cannot be stricken out as a nullity. The bond must be produced on trial, and a variance may be taken advantage of. The issue of *non est factum* could not be found for defendant. Plea *non est factum*, and plea payment, after finding *non est factum* for defendant, the finding payment for him also, can have no effect. But plaintiff cannot have judgment, whilst it appears on the record, that there is a condition which is not set out in his declaration. Circuit court erred in finding non est factum for defendant. *Payne* v. *Snell*. 238
14 Where pleas have been put in and issue joined, the court cannot give a judgment by default. The judgment should be on the finding of the issues. *Elliott* v. *Leak*. 540

PETITION AND SUMMONS.

1 Action of petition and summons—plea, non assumpsit. Held, to be a good plea without affidavit, and a proper one. *Burckhartt* v. *Watkins*. 72
2 Plea of former recovery in another court—replication, nul tiel record, concluding with an averment and prayer of debt and damages—no rejoinder filed, and judgment by default for the sum demanded. Held, that the judgment by default was properly taken. *ib*.
3 Petition and summons does not lie on an account stated, and where defendant, after a long account, the amount of which is added up and stated at the foot in figures, writes opposite the amount these words, "amount due T. and B. July 25th, 1835," and signs his name, it is nothing more than an account stated, and cannot sustain this action. *Wilson* v. *Turner and Brown*. 274
4 In petition and summons, where the pleadings admit the bond sued on, the court will take the date set out in the petition as the true date of the bond, and will calculate interest accordingly *Bentzen* v. *Zierlein*. 417
5 See variance, No. 3.

PRACTICE.

1 After pltf. who sues as administrator, states that he has closed his evidence, and defendant moves for a nonsuit because letters of administration have not been read, court may permit them to be read. *Huston v. Becknell*. 39
2 The def. at the first term filed a plea of set-off, to which pltfs. demurred. The demurrer was not disposed of until the second term, at which time it was overruled.—The pltfs. had leave to withdraw their demurrer and filed a replication. Held, that the defendant was entitled to a continuance, if he asked it—but having failed to rejoin, the court did not err in giving judgment by default. *Dempsey v. Harrison and Glasgow*. 267
3 On the trial of a suit for slander, the witnesses were ordered by the court to leave the court house during the examination of witnesses. A witness returned, in violation of the order. The def. applied to examine him. The witness stated he had returned because def. told him he did not wish to examine him—and the def. stated he would not examine him to any point on which the others had been examined. Held, the cir. court did not err in refusing to permit him to be examined. *Dyer v. Morris*. 214
4 On the trial of an indictment, a motion for a new trial, or in arrest of judgment will not be sustained, on the ground that the court ordered one of the venue, who on his voir dire, stated "that he had formed an opinion from having conversed with def. but that he felt himself then in a state of mind to do justice between the parties," to stand aside. Such an order is in accordance with the practice of the circuit courts and tends to secure impartial jurors. *Stoner v. The State*. 268
5 If the circuit court, sitting as a jury, finds a defective verdict, its judgment will not

be reversed in the appellate court, unless a motion was made in the court below to arrest the judgment, and overruled. *Davidson v. Peck.* 438

6 The supreme court, in reviewing the judgment of a circuit court, made on a finding of facts by the court without the aid of a jury, will not disturb that verdict, unless it be clearly against the weight of evidence. *Martin v. Withington.* 518

PRACTICE IN CHANCERY.

1 Where an issue of fact is tried by a jury, or the court sitting as a jury, in a chancery cause, the only mode of having the justice of the verdict investigated in the court above is, by moving for a new trial, before the decree is pronounced. A motion to dismiss the bill for defect of evidence, will not bring that question before the supreme court. *Woodson and Trigg* v. *McClelland.* 495

PROFERT.

1 In suits in the county courts to establish a demand against an administrator, profert of a bond sued on, is not necessary. *Kearney* v. *Woodson and Trigg, adm'rs.* 114

2 See demurrer, No. 1.

PUBLIC LANDS.

1 See statute of frauds, No. 1.

RECORDS.

1 See Mandamus, No. 1.

2 Papers tendered to the court, but not permitted to be filed, and such as are filed without leave first had, and treated afterwards as mere nullities, are not a part of the record, unless preserved by bill of exceptions—otherwise, as to pleadings regularly taken and tendered in the progress of a cause. *Mayfield* v. *Searingen.* 220

3 Declaration in debt on a Ky. record—plea, nul tiel record. The writ in the Ky. record, was made returnable on no day whatever, and judgment was there entered up by default. Held, that the judgment was irregular and void, for want of notice.—The writ must be returnable to some day certain. *Bobb* v. *Thomas & Graham.* 222

4 Judgment was obtained against the bank, and the record stated that the parties appeared by attorney. Afterwards, on motion, and affidavit, that the person on whom notice was served, was not at the time of service an officer of the bank, the judgment was by the circuit court set aside. Held, to be erroneous. The record, after the term, could not be contradicted by affidavit. *Lindell* v. *the Bank of Mo.* 228

REPLEVIN.

1 Replevin will lie, although no trespass has been committed by the defendant in taking the property. *Skinner* v. *Stouse.* 93

2 Replevin will lie, though there was no actual taking by any one, from the plaintiff. *ib.*

3 In replevin—plea of property in one P and N—replication, that P and plaintiff are the same, without noticing N. Held, bad. Plea of property in the plaintiff and another, good in bar or abatement. *Phillips* v. *Townsend.* 101

4 Action of replevin—plea, non cepit, and issue. The evidence to prove a *taking* by defendants was, that the horses, &c. the property mentioned in the declaration, was ranging about the farm, and that defendants exercised authority on the place, by prohibiting plaintiff, who was an administratrix, and witness who acted as her agent, from removing them. Held, sufficient proof of a taking. *Moore & Moore* v. *E. Moore.* 421

SALES.

1 See warranty, No. 1. Lien, No. 1.

INDEX.

SCIRE FACIAS.

1 See debt, No. 1.

SECURITY.

1 See assumpsit, No. 1 and 2.

SET-OFF.

1 See admissions, No. 2.
2 See costs, No. 2.
3 Action by plaintiffs on joint note of defendants, given to them as administrators of A. Defendants pleaded in off-set their portions of the estate of A, which plaintiffs as such administrators, had been ordered by the county court to pay each of them, as distributees of said estate. Held, (Judge Tompkins dissenting) to be a good plea. *Whaley & Blackwell* v. *M. & W. Cape.* 233
4 Per Judge Tompkins. The *separate* demands of each defendant, could not be united and pleaded as an off-set to their *joint* note—nor were the administrators liable for their portions, in this cross action, until demand and refusal. *ib.*
5 The provisions in our statute concerning off-sets, does not apply to a note which expresses to be "payable without defalcation." *Collins* v. *Waddle.* 452

SHERIFF'S SALES.

1 A sheriff advertises real and personal property to be sold under execution, during the session of the next circuit court for his county. The court, in consequence of excitement in the county, adjourned at an unusually early hour of the first day of its session. Held, a sufficient and legal excuse for the sheriff in not selling at that term. *Mitchell* v. *Gregg.* 37
2 When execution issues in an attachment case, for the sale of the property attached, the sheriff has no right to try the *right* of property, but must sell. *ib.*
3 See execution, No. 1.

SLANDER.

1 See character, No. 1.
2 To say of a woman, she has gone down the river with two whores to a goosehorn, and is now there with them, is not actionable without a colloquium as to the kind of house or place alluded to, and to which they had gone. Quere: are they actionable with the colloquium? *Dyer* v. *Morris.* 214

SLAVES.

1 The authority given by the act of the General Assembly to the Mayor and Aldermen of St. Louis, to license, tax and regulate, by ordinance, drays, &c. does not empower them to prevent slaves from being employed to drive such drays, &c. *The Mayor &c. St. Louis* v. *Hempstead.* 242
2 *Steamboat owners* are embraced within the meaning of the act of 1822, sec. 1, (Rev. Code of '25, page 747) concerning slaves, and an action on the case lies against them as well as ferrymen and owners of small craft, for violating its provisions. *Russell* v. *Taylor.* 550
3 No previous conviction in any other mode is necessary to sustain the action on the case, under this statute. *ib.*

SPECIFIC PERFORMANCE.

1 Attorney for plaintiffs in execution purchased at sheriff's sale, and after some months sold to A, in order to raise the money due his clients. A gave his bond to defendant

in execution to convey the property to him, in consideration of certain sums paid down, and other sums to be paid at specified times, conditioned to be void in case of a failure to pay at the time;--defendant failing to raise the money, applied to B, who advanced it for him, and took a conveyance to himself, and gave a similar bond to defendant;--again failing to raise the necessary sums, to entitle himself to a conveyance, the defendant applied to C and at his request, B conveys to C, who gives defendant a written promise, that on the payment of a specified sum on a day fixed, he would convey to him. Held, after the lapse of the *time* fixed on, the defendant has no claim in equity for a specific performance of the contract, and consequently his creditors have none. *Russell* v. *Geyer and others.* 384

STATUTE OF FRAUDS.

1 An improvement on the lands of the United States may be sold without writing, and is not affected by the statute of frauds. *Clark* v. *Shulter.* 235

STAY LAW.

1 The Act of the Legislature of Mo. directing a stay of execution on judgments obtained before justices of the peace, is unconstitutional, both as it regards the constitution of this State and the United States. *Bumgardner* v. *Circuit Court of Howard county.* 50

TRESPASS.

1 In an action of trespass, a plea of justification must admit the trespass. *Burton* v. *Sweany.* 2
2 But the trespass is sufficiently admitted by stating that defendant *took* the horses in the declaration mentioned. *ib.*
3 A defendant justifying a taking as constable, by virtue of an execution, is not bound to set out the judgment. *ib.*
4 He was bound to obey the *writ*, and had no right to compare it with the *judgment*. *ib.*
5 In such plea, it is unnecessary to show a *sale* of the property taken. *ib.*
6 The allegation in the declaration that defendant detained, converted, &c. the property, is matter of aggravation, and need not be answered in the plea. *ib.*
7 In an action of debt before a justice of the peace, under the statute, for certain trespasses, a statement in writing is required. In this statement, it must appear that the land lies in the State of Missouri--and it must be described. The statute of 1831 in regard to errors of justices of the peace, does not reach this case. *Donahoe* v. *Chappell.* 34
8 In an action of trespass, founded on the statute "for the prevention of certain trespasses," (Rev. Code of '25--781-2) and after verdict found of "guilty," the court properly enters up a judgment for the penalty of five dollars and double damages.--*Withington* v. *Young.* 564
9 A count founded on the statute may be joined with a general count in trespass. *ib.*

TRUSTS.

1 See specific performance, No. 1,
2 See frauds, No. 6.

VARIANCE.

1 The declaration on the record of a decree, stated the decree to be for $125 51, "being the balance of hire for a negro boy John." The decree is for $125 51, "being the amount which the hire of the boy John exceeds the original advances made by the defendant to complainant, and interest thereon." Per C. There is no variance.--*McQueen* v. *Farrow.* 212

2 The defendant pleaded that by a defeasance, &c. he was not bound in any event to pay the bond sued on, until after a settlement of accounts between him and intestate. The defeasance given in evidence was, that should a balance, on examination of books, &c. be found due defendant, the bond should be credited then, with &c. Held, not to support the plea. *Weber* v. *Manning*. 229
3 In petition and summons, it is not a material variance for the pleader in setting out a copy of the note sued on, to write correctly words that are wrongly spelled in the original. *Dent* v. *Miles*. 419
4 See amendment, No. 2.

VENUE.

1 See indictment, No. 5.

VERDICT.

1 A general verdict, in an action against executors de son tort, where there are several issues, will not suffice. *Foster and Foster* v. *Nowlin*. 27
2 The omission by plaintiff in assumpsit, to state in the declaration his excuse for not performing part of the agreement, is cured by verdict. *Helm* v. *Wilson*. 481

WARRANTY.

1 B sold to S a negro, and executed a bill of sale, in substance as follows: "For and in consideration of, &c. paid, &c. I have sold to S a negro slave, sound in body and mind, and slave for life. I bind myself to warrant the title of said negro from all and every person. Held, to be a warranty as to title only, and a mere representation as to soundness. M'Girk, Judge, dissenting. *Soper* v. *Breckenridge*. 14
2 If a slave warranted sound be only slightly diseased, and come to its death by negligence or cruel treatment of the purchaser, the seller is not liable for the full value or price—but only to the extent of injury occasioned by the disease. *ib.*
3 In a bill of sale of a slave, the seller warranted the slave "from all vices and diseases prescribed by law." Held, that the words "prescribed by law" ought to be rejected, and that it is a contract against all vices and diseases. *Sloan* v. *Gibson*. 32
4 The warranty is against diseases existing at the *time of making it*. *ib.*
5 See justices' courts, No. 3.

WILLS.

1 A legatee or devisee, who is also heir at law, is a competent witness to prove a fact to establish the will, under which he takes the legacy, when the establishment of the will is clearly against the interest he would have as heir. *Graham* v. *O'Fallon, executor*. 336
2 To authorize the county court to issue a citation to witnesses, to testify their knowledge concerning the existence, destruction or possession of a will, it is essential that the executor or other persons interested, should make affidavit "that he has cause to believe, and that he does believe" that some person has cancelled or embezzled any books, papers, &c. An affidavit wanting this affirmation is therefore defective, and the court may properly refuse a citation. *ib.*
3 An attorney who draws up a will, is present at the time of its execution—sees the will, after the death of the testator, in the possession of testators family—reads it and recollects its principal provisions—is a competent witness to prove those facts, and his evidence is not subject to the objection, that it discloses confidential communications of a client. *ib.*
4 Bill in equity by one legatee and heir against the other legatees and heirs to establish and carry into effect the provisions of a will, so far as they can be proven. The bill charges the will to have been duly made—and to have been taken from its depository by fraud, and lost or destroyed—that some of the legatees live in Ky. Held by the

court, that the jurisdiction in this case is exclusive in the county courts—and a court of chancery has no jurisdiction. *Jackson* v. *Jackson*. 210
5 Probate may be granted of so much of a will as can be proved. *ib.*
6 Whether a witness, who is both devisee and heir at law, is competent to establish a will, depends on the question, whether he will take more or less by the will than by the intestacy. *Graham and others* v. *O'Fallon, ex'r. of Mullanphy.*
7 Hence, where the real estate is proved to be worth about $2,250,000, and the share of witness, in case of intestacy, about $285,000, whilst under the will he gets only $50,000, and a remote contingent interest in an undivided share of the balance, which in no event would equal his share in case of intestacy, the interest of the witness is clearly *against* the establishment of the will, and he is a competent witness. *ib.*
8 The witness, whose evidence established the contents of the will, also stated, that the last time he read the same before it was executed, there were several blanks, which blanks, it was proved, were found, after the death of testator, to be filled up in testator's hand-writing;—it being *possible* from the evidence, that the blanks were filled either before or after execution, it was held, that the presumption of law will be in favor of the *right time to make the instrument good*—to wit: that the blanks were filled before the will was signed and attested. *ib.*
9 *One* witness is sufficient to establish the contents of a lost will. *ib.*

WITNESSES.

1 See practice, No. 3.

WRITS.

1 All writs must run in the name of the State—and the State and county being placed in the margin, and separated by a line from the commencement of the writ, is not a compliance with this constitutional provision. *Fowler* v. *Watson*. 27

ERRATA.

PART FIRST.

PAGE 13 19th line, for *disproves* read *disposes*.
20 15th line, strike out first *of*.
28 11th line, for *Strut*. read *Street*.
35 42d line, for *law* read *land*.
36 13th line, for *place* read *plead*.
" 29th line, for *law* read *land*.
" 34th line, for *try* read *bring*.
37 23d line, for *there* read *then*.
39 19th line, in head notes, and also in marginal notes, for *recovers* read *moves*.
40 16th line, after *been* insert *made*.
41 7th line of head note and marginal note, for *times* read *terms*.
43 44th line, for *may prove* read *was proved*.
63 30th line, for *presented* read *prosecuted*.
64 10th line, after *profits* insert *and*.
" 39th line, for *last* read *lost*.
78 In head note of Bates v. Hinton, line 10, for *his* read *her*.

PART SECOND.

PAGE 108-10-12 At head of page, for *third* read *first*.
112 3d line, for *confounded* read *unfounded*.
135 31st line, for *decision* read *2nd division*.
137 46th line, for *material* read *marital*.
182 33d line, insert "*provided he.*"
227 25th line, for *owed* read *covered*.
232 25th line, for *of* read *or*.
234 In marginal note, for *vote* read *note*.
241 10th line, insert after be, the word *true*.
244 6th line from bottom, for *considered* read *answered*.
245 In head note, for *deceased* read *diseased*.

PART THIRD.

PAGE 254 In head note, for *ty* read *to*.
256 2nd line, for *an* read *and*.
256 Head note, 1, 1, 4, for *pe* read *be*.
266 18th line from bottom, for *formed* read *found*.
267 8th line from bottom, for *nel* read *nil*.
279 4th line from bottom, for *on* read *in*.
280 19th line from bottom, for *was* read *were*.
282 2nd line from top, for *summoned* read *surrendered*.
" 9th line from bottom, for *not* read *at*.
286 Head note, for *commending* read *commanding*.
290 11th line from bottom, for *in* read *no*.
293 10th line from bottom, for *se* read *si*.
297 12th line from bottom, for *best* read *least*.
S. p. Last line, for *no* read *not*.
298 20th line from bottom, for 1835 read 1825.
300 11th line from top, for *Man*. read *Mun*.
302 18th line from top, for *my* read *may*.
304 Last line, for *Hometheus speech and adeplory F. C.*" (which is a literal copy from the MSS.) read *Hamilton's speech on F. C.*

PAGE 305 7th line from top, for "*Dr. Lame on Bc.*" (which is a literal copy of the MSS.) read *De Lolme on the Brit. const.*
S. p. 9th line from top, for *hare* read *hear.*
307 21st line, for *presented* read *prescribed.*
311 Head note 2. for *personal* read *present.*
314 For *Gyer* read *Geyer.*
" 8th line from bottom, for 14 read 614.
316 For *Tiernan* wherever it occurs in the case of Hill v. Tiernan and Maslin, read *Tiernan.*
" For 5000 read 2500.
317 5th line from bottom, for *sd* read *pltf's.*
318 For GYER read GEYER.
319 Insert before the 2d paragraph, "Wash, J. delivered the opinion of the court."
321 3d line, strike out *his.*
" 9th line, after *effect* insert *which.*
324 19th line from bottom, after *interested* insert *to bid.*
325 16th line from bottom, add *so* at the end of the line.
327 5th line, after *still* insert *if.*
332 4th line from bottom, strike out *the* before *conjunction.*
333 20th line from top, before *pre-emption* insert *right of.*
" 9th line from bottom, for *charged* read *chargeable.*
334 Side note, for *op* read *of.*
" 2d line from bottom, for *take* read *took.*
336 17th line from bottom, after *then* insert *could.*
338 2d head note, 2nd line from bottom, for *the* read *this.*
" 4th line, for *come* read *came.*
349 6th line from bottom, after *than* insert *that.*
350 15th line from bottom, for *then* read *than.*
355 In head note, line 4, for *reversed* read *reviewed.*
" 13th line from bottom, for 2 *Mo. Dec.* read 3 *Mis. Dec.*
360 For 357—s. p. 3d line from top, for *see.* read *Selw.*
364 For HUTER read HUNTER.
" 3d line, for *shewn* read *show.*
368 2d paragraph, 1st line, for *trovers* read *travers.*
371 Head note 3. 2d l. for *Mo.* read *Md.*
374 Side note, for *Mo.* read *Md.*
379 4th line, for *noting* read *nothing.*
383 13th line from bottom, for *statutes* read *States.*
384 3. head note, for *set* read *yet.*
386 11th line from top, for *ro* read *to.*
388 23d line from bottom, for *to wit:* read *to wait.*
398 6th line from top, for *Sep.* read *Sess.*
399 5th l. from top, for 26 read 16.
400 19th line from top, for 265 read 334
401 For *M'Girk* read *Tompkins.*
406 7th line from top, for *recorded* read *recovered.*
420 For *company* where it occurs first, read *companey.*
421 In head note, for *was* read *were.*
433 16th line from top, for *was* read *were.*
441 2nd line, for *which in* read *in which.*
" 15th line, for *cause* read *cases.*
448 24th line, for *print* read *point.*
451 2d line, for *provided* read *promise.*
454 3d line, for *Mri.* read *Abr.*
" 8th line from bottom, after *body* insert *of the county.*

PART FOURTH.

PAGE 478 6th line from bottom, for *an* read *no.*
481 7th line from bottom, for *6th* read *9th.*
487 22d line from bottom, for *administered* read *admitted.*
" 13th line from bottom, for *admitted* read *administered.*
493 10th line from bottom, for *2d* read *3d.*

PAGE 499 10th line from bottom, for *Joe Lowdie* read *Jac. Law Dic.*
500 22d line from bottom, after *if* insert *it.*
508 12th line from top, for *in value* read *involved.*
" 12th line from bottom, for *executed* read *excluded.*
511 11th line from bottom, for *stronger* read *stranger.*
519 13th line from bottom, for *review* read *received,*
524 9th line from top, for *Questies* read *Quoties,*
" 10th line from top, for *centra* read *contra.*
530 2d line from top, for *recovered* read *reversed,*
582 13th line from bottom, for *filed* read *field.*
588 Side note, for *port* read *post.*
610 17th line from bottom, for *case* read *code*, and for *proved* read *provided.*

ERRATA, FOR VOL. 3RD.

GREEN v. SPENCER, & HILL v. MAUPIN, } Vol. 3rd Mo. Decisions.

PAGE 326 7th line, for *doctrine* read *dictum.*
12th line, for *doctrine* read *dictum.*
17th line, for "*are* illegal *donsiderations*, or *are*" read *an* illegal consideration, or *one.*

I certify that I have examined the certified copies, and corrected the printing of the Decisions embraced in the first 104 pages of this volume thereby.

R. W. WELLS,
Attorney General.

March 21, 1836.

I certify that I have compared the Decisions contained in this volume, from page 104 to the end, with the transcripts on file in my office, and have corrected the same thereby.

W. B. NAPTON,
Attorney General.

December 3, 1837.